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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/032,893	02/27/1998	JOHN O. BIESER	41824B	1428

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EXAMINER

JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 08/28/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)	
09/032,893	BIESER ET AL.	
Examiner	Art Unit	
Cheryl Juska	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 9-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 9-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 31.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed with the Request for Reconsideration (Paper No. 30) on July 31, 2002, have been fully considered but they are not persuasive.

2. In particular, Applicant argues that the laminate of Jialanella is not itself an adhesive polymer in that said laminate is comprised of a first substrate, an adhesion promoter, and a second substrate (Request for Reconsideration, paragraph spanning pages 2-3). In response, it is first noted that both Jialanella's first substrate and the adhesion promoter meet Applicant's limitation of the substantially linear ethylene polymer (SLEP). Jialanella does indeed teach the first substrate is laminated to a second substrate via the adhesion promoter. Jialanella continues to said that the second substrate may be a plastic material and said laminate is useful as carpet backing (col. 5, lines 42-48). Thus, the teachings of Jialanella can be interpreted as a carpet laminate wherein the second substrate is the tufted primary backing and said first substrate (i.e., a secondary backing) is adhered to the primary backing via the adhesion promoter. In other words, the primary carpet backing functions as Jialanella's second substrate and the carpet itself comprises Jialanella's three layer laminate, rather than Applicant's interpretation that Jialanella's three layer laminate is further laminated to a carpet as a secondary backing. Therefore, Applicant's argument is not found to be persuasive.

3. Applicant also argues that the cited Fink reference teaches away from using ethylene polymers (Request for Reconsideration, paragraph spanning pages 3-4). In response, it is reiterated that with respect to the rejection of the claims over Fink in view of Jialanella, it would

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have been obvious to one skilled in the art to substitute the Jialanella first substrate and adhesion promoter for the thermoplastic *polyolefin* adhesive backing disclosed by Fink. Thus, the Fink disclosure is not relied upon merely for its teaching of polyethylene adhesive compositions, but rather polyolefins in general. Additionally, it is noted that the polyethylenes disclosed by Fink do not include the SLEP's disclosed by Jialanella, but rather LDPE, LLDPE, MDPE, and HDPE. Furthermore, it is noted that the "poor" bond strength cited by Fink in Table A is the "expected bonding strength with polypropylene" (Fink, page 19, lines 18-22) and are not necessarily descriptive of the suitability of polyethylenes as the intended extruded sheet. Also, it is noted that when the same polyethylenes are blended with polypropylene, the bond strengths with polypropylene are "good to excellent" (col. 4 of Table A, page 20 of Fink). Applicant's support of Table D for teaching away from polyethylene is confusing to the Examiner, since said table is descriptive of "compatibility for recycling materials." Specifically, the "poor" ratings of polyethylene are descriptive of the "possibility of recycling the polymer or polymer blend" (i.e., polyethylene) to form a fiber and a fusion layer (Fink, page 31, lines 5-9). Thus, Applicant's arguments are found unpersuasive.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claims 1-6 and 9-12 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Jialanella patent (US 5,741,594) in view of the cited Fink patent (WO 93/15909) for the reasons of record.

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6. Claims 1-6 and 9-12 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Fink patent in view of the cited Jialanella patent for the reasons of record.

7. Claims 1-6 and 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,344,515 issued to Parikh et al. in view of the cited Fink patent.

Parikh discloses an adhesive composition comprising at least one substantially random interpolymer and a vinylidene monomer (abstract). Said adhesive composition may also contain an extending or modifying composition such as a Dow's AffinityTM, a substantially linear ethylene polymer (SLEP), disclosed in US 5,272,236 and 5,278,272 issued to Lai et al. (col. 14, lines 31-67 and col. 17, lines 11-17). Said modifying composition may be included in the adhesive in an amount ranging from 5 to 75% by weight (col. 19, lines 25-30). The short chain branching distribution index (SCBDI) for said SLEP is preferably greater than 50%, more preferably greater than 70%, and most preferred greater than 90% (col. 15, lines 16-34). The SLEP will be an interpolymer of ethylene with at least one C₃-C₂₀ α -olefin (col. 16, lines 18-25). Lai's disclosure teaches said SLEP has the presently claimed melt flow ratio, molecular weight distribution, and critical shear rate (Lai '272, claim 1). [Note Applicant also discloses the compositions of the cited Lai patents as suited for the present invention. See specification, page 17, lines 1-6.]

Parikh states, "The compositions of the invention will have utility in applications in which adhesives, particularly hot melt adhesives are typically employed....The compositions may be readily extruded onto a variety of substrates, including but not limited to carpet backing..." (col. 21, lines 1-13). Thus, Parikh teaches the present invention with the exception of the carpet structure. However, the presently claimed carpet structure (i.e., primary backing,

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tufts in said primary backing, an adhesive backcoat, and optional secondary backing) is well-known in the art. Additionally, it is well-known in the art for an adhesive backcoat to be in intimate contact with the primary backing and penetrating and consolidating the tufts fibers of said primary backing. Specifically, this is the intended purpose of an adhesive backcoat: to penetrate and consolidate the tuft backloops and the primary backing in order to secure said tufts in said primary backing. For example, the cited Fink patent discloses said carpet structure. See Fink, abstract, page 11, lines 2-10, page 11, line 23-page 12, line 4, and Figures.

Therefore, it would have been obvious to employ the adhesive composition of Parikh in the carpet structure disclosed by Fink. Motivation to do so is found in the explicit teachings of Parikh that said composition is suited as a carpet backing. Therefore, claims 1-6 and 9-12 are rejected as being obvious over the cited art.

8. Claims 1-6 and 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Fink patent in view of the cited Parikh patent.

In the alternative, the pending claims are rejected as being obvious over the Fink patent, which teaches the claimed carpet structure, in view of the Parikh patent, which teaches the claimed adhesive carpet backing. It would have been obvious to one of ordinary skill in the art to substitute the Parikh adhesive composition for the thermoplastic polyolefin adhesive disclosed by Fink. Motivation to do so would be the explicit teaching of Parikh that said composition is suited for carpet backings and the inherent properties of said composition, such as good toughness and tensile strength.

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Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

10. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



CHERYL A. JUSKA
PRIMARY EXAMINER

cj
August 23, 2002